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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,080	10/06/2003	Michael Roy Barry	TOMK0001	9923
25235	7590	09/21/2005		
HOGAN & HARTSON LLP ONE TABOR CENTER, SUITE 1500 1200 SEVENTEENTH ST DENVER, CO 80202			EXAMINER ARYANPOUR, MITRA	
			ART UNIT 3711	PAPER NUMBER

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/680,080

Applicant(s)

BARRY, MICHAEL ROY

Examiner

Mitra Aryanpour

Art Unit

3711

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Please See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-14, 19 and 29-40.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


**MITRA ARYANPOUR
PRIMARY EXAMINER**

Continuation Sheet:

The amended claims are not deemed to place the application in better form for appeal. As indicated in our Interview dated 10 August 2005, the curved structure defining the intermediate connecting member appears to distinguish over the prior art of record. As a courtesy to applicant additional search has been made and further consideration has been given to the amended claims. The claims as amended overcome the rejection over Knight. However, claim 1 as amended does not overcome the rejection over Blackburn. Blackburn shows an elongated rod (1), a table engaging member (2) and an intermediate connecting member (4), wherein the intermediate connecting member is offset from the shaft (see figure 2, one arm is offset to the right while the other arm is offset to the left). It is noted that the intermediate member does not need to be curved, nor does the claim prevent the intermediate portion from being divided into "two intermediate portions". It is also noted that patent to McDonald (GB 2,194,161 A) also reads on claim 1 as amended. Claim 40 as amended overcomes the rejection over Blackburn. However, if broadly interpreted, claim 40 now reads on newly found patent to Herzer (2,805,068). Herzer shows an elongated shaft (10), a table engaging means (33) and an intermediate connecting means (12) connecting the table engaging means to the shaft. The intermediate connecting means (12) having a curved portion (lateral extending arms 14 and/or 16) offset from the shaft. As can be seen from figure 1, the lateral arms are curved. It is noted that there is requirement for the intermediate portion not to be formed of "two intermediate portions". As indicated above and in the interview the curved structure of the intermediate portion should be positively recited in order to overcome the prior art.

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Additionally, in claim 40, line 5, "shaft" should be inserted before "axis". The elimination of "shaft" raises 112 2nd issues.

The amendments to the Specification would be entered if submitted in a separate, timely filed amendment.

With regards to the Objection to page 3, line 1 of the Specification. It appears that the objection has been inadvertently made and no objection should have been made.